UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,988	12/14/2001	William R. Matz	36968/265390 (BS01371)	4972

7590 10/30/2007

SCOTT P. ZIMMERMAN PLLC
P.O. BOX 3822
CARY, NC 27519

EXAMINER	
KOENIG, ANDREW Y	
ART UNIT	**PAPER NUMBER**
2623	

MAIL DATE	DELIVERY MODE
10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/016,988	MATZ ET AL.	
	Examiner	Art Unit	
	Andrew Y. Koenig	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 July 2007 has been entered.

Response to Arguments

1. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

The applicant has not traversed the examiner's assertion of official notice. Consequently, the examiner notes the features of the official notice are taken to be admitted prior art because the applicant failed to traverse the examiner's assertion of official notice. See claims 13 and 27: Official Notice is taken that the use of using a banner for an advertisement is known in the art. In response to the applicant's request that the examiner specifically point out the assertion of Official Notice (see remarks filed 24 July 2007), the examiner notes that the official notice was used in the Office Action mailed 18 August 2006 (see pg. 6).

For independent claims 1 and 15, the applicant argues that Grauch and Batten are silent to at least the feature of "classifying the subscriber in a user classification when the subscriber's viewing time for a programming genre exceeds a predetermined level." The examiner disagree; Batten clearly teaches analyzing subscriber data for keywords (action or western movies – specific types of genres), and further counting the number of times or amount of time and if the number exceeds a threshold assigning the subscriber to a certain customer profile or demographic group (where in a certain customer profile or demographic group reads on a classifying the subscriber in a user classification) – see Batten pg. 12, ll. 8-20.

The applicant argues that Grauch and Batten are silent on "comparing subscriber viewing time to a classification parameter." The examiner disagrees; Grauch distinguishes between a commercial viewed and a commercial watched (pg. 32, ll. 6-pg. 34, ll. 5) and Batten determines whether the commercial has been viewed or turned off (pg. 17, ll. 7).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 6, 7, 9-13, 15, 21-24, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch) in view of WO 01/47156 to Batten et al. (Batten).

Regarding claims 1 and 15, Grauch teaches a method and system for collecting subscriber data about a subscriber's use of media programming (pg. 10, ll. 13-26), identifying a command of interest from the subscriber (pg. 32-33, ll. 14-9), forming an event record that comprising the command of interest and a time associated with the command of interested (fig. 7A, 7B, pg. 32-33, ll. 14-9), merging the event record with data describing the media programming to form event timelines which describe the media programming selected by the subscriber over a period of time (fig. 7A, 7B, pg. 34, ll. 6-18), matching data from the event timelines with at least one relevant criteria describing which subscribers are desirable for receiving the selected advertisement (pg. 34, ll. 6-18), when data from the event timelines matches the at least one relevant criteria, then identifying the subscriber as a desirable subscriber to receive an advertisement (pg. 34, ll. 13-18).

Grauch is silent on classifying the subscriber in a user classification when the subscriber's viewing time for a programming genre exceeds a predetermined level, communicating the media programming to the user, and when a match is defined between the user classification and the advertisement, then inserting the advertisement in the media programming.

Batten teaches classifying the subscriber in a user classification when the subscriber's viewing time for a programming genre exceeds a predetermined level (pg. 6, ll. 17-32, pg. 10, ll. 1-20), communicating the media programming to the user (pg. 10, ll. 10-16), and when a match is defined between the user classification and the advertisement, then inserting the advertisement in the media programming (pg. 10, ll. 1016, pg. 12-13, ll. 21-7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch by classifying the subscriber in a user classification when the subscriber's viewing time for a programming genre exceeds a predetermined level, communicating the media programming to the user, and when a match is defined between the user classification and the advertisement, then inserting the advertisement in the media programming as taught by Batten in order to intelligently select and display advertisements that offer products or services a viewer is truly interested in purchasing (Batten: pg. 4, ll. 6-20).

Regarding claims 6 and 22, the combination of Grauch and Batten teaches information describing online searches (Batten: pg. 3, ll. 26), but are silent on web pages viewed and purchases made online. Official Notice is taken that tracking information describing web pages viewed and purchases made online is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by tracking information describing web pages viewed and purchases made online in order to effectively

characterize the subscriber and their habits, thereby enabling the system to effectively target subscribers.

Regarding claims 7 and 24, the combination of Grauch and Batten teaches comparing the subscriber's viewing time to a classification parameter, in that Grauch distinguishes between a commercial viewed and a commercial watched (pg. 32, ll. 6-pg. 34, ll. 5) and Batten determines whether the commercial has been viewed or turned off (pg. 17, ll. 7).

Regarding claims 9 and 23, Grauch is silent on survey data. Batten teaches survey data (pg. 10, ll. 27-28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch by using survey data as taught by Batten in order to enable the user to provide user-specific information and incorporate the data for tailoring the targeted advertisements more effectively.

Regarding claim 10, Grauch is silent on sales data. Batten teaches sales data (pg. 12, ll. 5-7). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch by using sales data as taught by Batten in order to enable the user to provide user-specific information and incorporate the data for tailoring the targeted advertisements more effectively

Regarding claims 11 and 21, Grauch is silent on an image embedded into media content. Batten teaches inserting commercials (pg. 15, ll. 1-5, 14-19), which reads on image embedded into media content. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch by embedding images into media content as taught by Batten in order to effectively target commercials to targeted audiences.

Regarding claims 12 and 26, Grauch is silent on the advertisement being a video program. Batten teaches the advertisement being a video program (pg. 15, ll. 14-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch by using the advertisement as being a video program as taught by Batten in order to effectively provide target content within a broadcast transmission.

Regarding claims 13 and 27, Grauch and Batten are silent on a banner. Official Notice is taken that the use of using a banner for an advertisement is known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by using a banner for an advertisement in order to provide targeted content while the user is viewing a program.

4. Claims 8 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch) and WO 01/47156 to Batten et al. (Batten) in view of U.S. Patent 5,758,259 Lawler et al. (Lawler).

Regarding claims 8 and 25, the combination of Grauch and Batten are silent on comparing viewing times to plural classifying parameters, wherein each parameter describes a different classification. Lawler teaches comparing viewing times to plural classifying parameters, wherein each parameter describes a different classification, in that Lawler teaches Genres, sub-genres in addition to teams and names (see table 2, col. 7, ll. 47-50, col. 7-8, ll. 62-3, col. 8-9, ll. 63-17). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by comparing viewing times to plural classifying parameters, wherein each parameter describes a different classification as taught by Lawler in order to enable multiple characteristics to help correlate desirable programming.

5. Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch) and WO 01/47156 to Batten et al. (Batten) in view of U.S. Patent 6,696,020 to Zigmond et al. (Zigmond).

Regarding claims 2 and 16, the combination of Grauch and Batten teaches classifying the subscriber based on the time the advertisement has been seen (see Grauch: pg. 32, ll. 6-pg. 33, ll. 9 and Batten: pg. 17, ll. 5-7), but is silent on classifying when a predetermined number of advertisements is exceeded. Zigmond teaches classifying when a predetermined number of advertisements is exceeded for the benefit

of preventing viewers from becoming frustrated through being excessively exposed to the selected advertisement (col. 13, ll. 42-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by classifying when a predetermined number of advertisements is exceeded as taught by Zigmond in order to prevent viewers from becoming frustrated through being excessively exposed to the selected advertisement.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch), WO 01/47156 to Batten et al. (Batten), U.S. Patent 6,696,020 to Zigmond et al. (Zigmond) in view of U.S. Patent Application Publication 2001/0004733 to Eldering.

Regarding claim 3, Grauch, Batten, and Zigmond are silent on classifying when the amount of a product is purchased. In analogous art, Eldering teaches classifying when the amount of a product is purchased (pg. 6, para. 0084-0085). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch, Batten, and Zigmond by classifying when the amount of a product is purchased as taught by Eldering in order to acquire information about the consumer's habits thereby enabling the advertiser to target commercials towards a particular segment of the population.

7. Claims 4, 5, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch) and WO 01/47156 to Batten et al. (Batten) in view of U.S. Patent Application Publication 2001/0004733 to Eldering.

Regarding claim 4, Grauch and Batten are silent on comparing advertisements viewed to shopping information describing brands, and classifying when an advertised product is purchased. Eldering teaches acquiring consumer behavior of shopping information (wherein the shopping information describes brands) and correlates to effectiveness of the advertisements (pg. 6, para. 0076-0080). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by comparing advertisements viewed to shopping information describing brands, and classifying when an advertised product is purchased as taught by Eldering in order to enable advertiser to target commercials towards a particular segment of the population and determine the effectiveness of their advertising campaigns.

Regarding claims 5 and 18, Grauch and Batten teach a relationship among shopping information (products ordered via interactive televisions) and the event timelines (Batten: pg. 12, ll. 5-20, pg. 17, ll. 12).

Regarding claim 17, Grauch and Batten are silent on classifying when the amount of a product is purchased. In analogous art, Eldering teaches classifying when

the amount of a product is purchased (pg. 6, para. 0084-0085). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by classifying when the amount of a product is purchased as taught by Eldering in order to acquire information about the consumer's habits thereby enabling the advertiser to target commercials towards a particular segment of the population.

Regarding claims 19, Grauch and Batten teach a relationship among shopping information (products ordered via interactive televisions) and the event timelines (Batten: pg. 12, ll. 5-20, pg. 17, ll. 12), but is silent on detecting a relationship when the user views an advertisement and purchases the product. Eldering teaches determining a relationship when the user views an advertisement and purchases the product (pg. 8, para. 0105). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by detecting a relationship when the user views an advertisement and purchases the product as taught by Eldering in order to provide advertisers with feedback data thereby enabling the advertisers to more efficiently target segments.

Regarding claim 20, Grauch and Batten teach a relationship among shopping information (products ordered via interactive televisions) and the event timelines (Batten: pg. 12, ll. 5-20, pg. 17, ll. 12), but is silent on detecting a relationship when the user views an advertisement and purchases the product. Eldering teaches determining

a relationship when the user views an advertisement and purchases the product (pg. 8, para. 0105). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by detecting a relationship when the user views an advertisement and purchases the product as taught by Eldering in order to provide advertisers with feedback data thereby enabling the advertisers to more efficiently target segments.

Grauch and Batten are silent on classifying when the amount of a product is purchased. In analogous art, Eldering teaches classifying when the amount of a product is purchased (pg. 6, para. 0084-0085). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch, Batten, and Zigmond by classifying when the amount of a product is purchased as taught by Eldering in order to acquire information about the consumer's habits thereby enabling the advertiser to target commercials towards a particular segment of the population.

Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/31114 to Grauch et al. (Grauch) and WO 01/47156 to Batten et al. (Batten) in view of U.S. Patent 6,177,931 to Alexander et al. (Alexander).

Regarding claims 14 and 28, Grauch and Batten are silent on an advertisement appearing at the same time as an electronic program guide. In analogous art, Alexander teaches placing advertisements appearing at the same time as an electronic program guide (EPG) (see. Fig. 1, 3, 4A, 4B, 5-9, 10A, and 10B). Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grauch and Batten by placing advertisements appearing at the same time as an electronic program guide as taught by Alexander in order to improve opportunities for commercial advertisers to reach the viewer and enable product information access by the viewer (Alexander: col. 2, ll. 13-21).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Y. Koenig whose telephone number is (571) 272-7296. The examiner can normally be reached on M-Fr (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571)272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andrew Y Koenig
Primary Examiner
Art Unit 2623

ayk